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No. 302

**FRANK PICH, vs. IGNATIUS LANZETTA,
MICHAEL FALCONE and LOUI DELELLI.**

Appellants.

vs.

THE STATE OF NEW JERSEY.

**APPEAL FROM THE COURT OF CHANCERY AND APPEALS OF THE CHANCERY
OF NEW JERSEY**

STATEMENT AS TO JURISDICTION.

**SAMUEL KASER,
GEORGE C. KLAUMER,
HARRY A. MACHRY,
Counsel for Appellants.**

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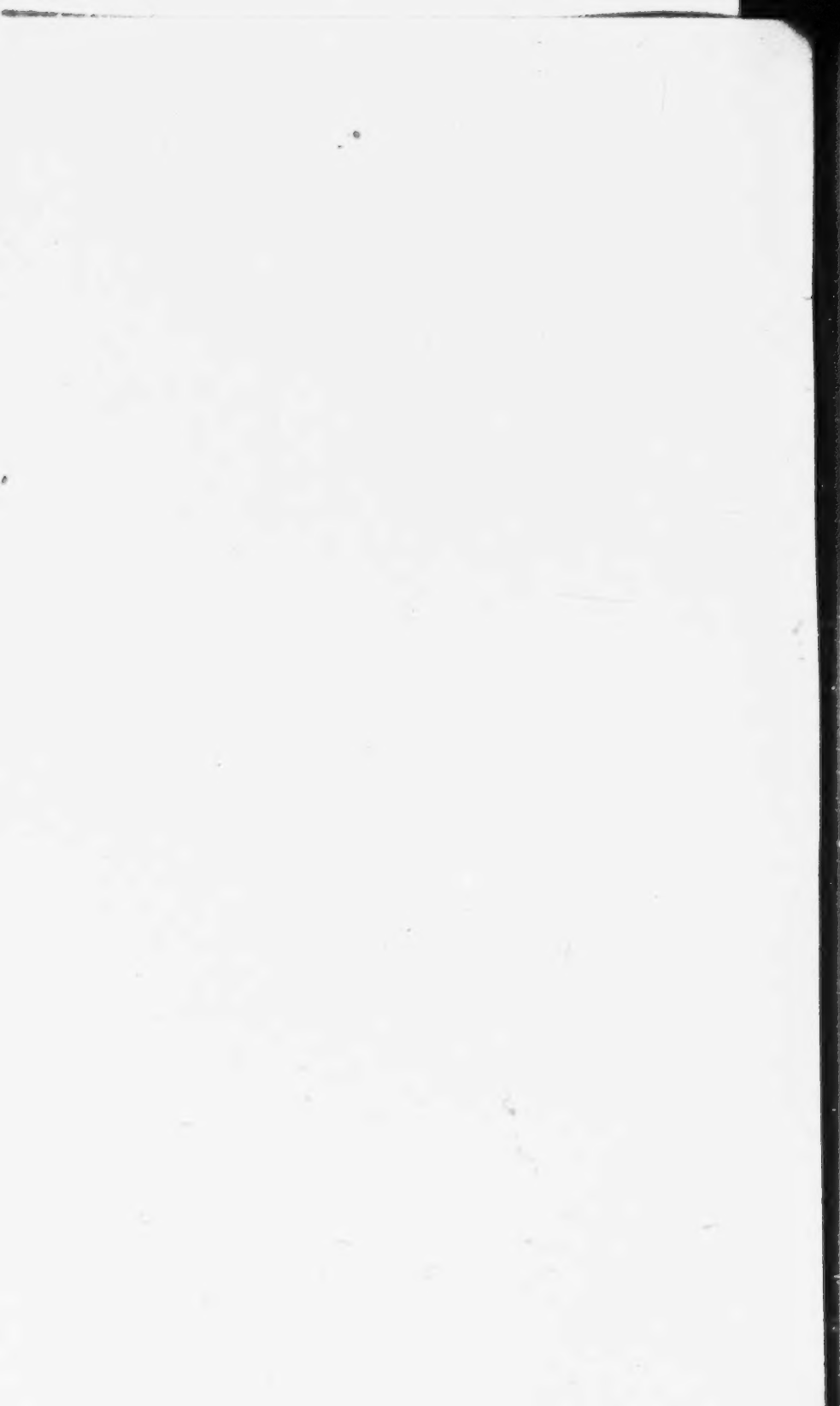
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SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1938

No. 308

FRANK PIUS, ALIAS IGNATIUS LANZETTA,
MICHAEL FALCONE AND LOUIE DEL ROSSI,
Appellants,
vs.

THE STATE OF NEW JERSEY.

STATEMENT AS TO JURISDICTION.

Filed July 15, 1938.

Ignatius Lanzetta, Louie Del Rossi and Michael Falcone, by their attorneys, Samuel Kagle, Harry A. Mackey and George C. Klauder, respectfully submit the following statement in support of the jurisdiction of the United States Supreme Court to review the judgment of the New Jersey Court of Errors and Appeals, on Appeal.

A. The statutory provision sustaining the jurisdiction of the United States Supreme Court is under Section 237 (a) of the Judicial Code, Act of February 13, 1925, Chapter 229, 43 Stat. 936, which reads as follows:

“SEC. 237. (a) A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the

validity of a treaty or statute of the United States, and the decision is against its validity; or where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The Writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, in its discretion, award execution, or remand the cause to the court from which it was removed by the writ."

B. The statute of the State of New Jersey involved in this cause is Chapter 155 of the Laws of 1934 (P. L. 394) known as the "Gangster Act", which Statute appellants contended was repugnant to the Constitution of the United States and the final judgment of the New Jersey Court of Errors and Appeals was to sustain the validity of said Estate.

The pertinent sections of Chapter 155 of the Laws of 1934 which are here involved are as follows:

"SECTION 4. Any person not engaged in any lawful occupation, known to be a member of any gang, consisting of two or more persons, who has been convicted at least three times of being a disorderly person or who has been convicted of any crime in this or in any other State, is declared to be a gangster."

(A proviso clause is omitted because it is not pertinent.)

"SECTION 5. Any person convicted of being a gangster under the provisions of this Act shall be guilty of a high misdemeanor and shall be punished by fine not exceeding \$10,000.00 or imprisonment not exceeding twenty years, or both."

C. The date of judgment of the New Jersey Court of Errors and Appeals was April 29, 1938, and the date when application for appeal was presented is July 15, 1938.

Nature of Case.

The three defendants were convicted as "gangsters" under an Indictment based on Section 4 of Chapter 155 of the Laws of 1934 (P. L. page 394).

The Section provided,

"Any person not engaged in any lawful occupation, known to be a member of any gang, consisting of two or more persons, who has been convicted at least three times of being a disorderly person or who has been convicted of any crime in this or in any other state, is declared to be a gangster."

The fifth Section of said Statute provides that upon conviction such person shall be guilty of a high misdemeanor and shall be punished by fine not exceeding \$10,000.00 or imprisonment not exceeding twenty years, or both.

The defendants were sentenced by the Court of Quarter Sessions of Cape May County to a term of imprisonment of not less than five years nor more than ten upon a verdict of the jury which was, "Guilty, with recommendation to the Court for mercy".

During June of 1936 Ignatius Lanzetta, a resident of Philadelphia and a citizen of Pennsylvania, rented a summer home in Wildwood Crest, New Jersey, a vacation resort. This home was occupied by Lanzetta and his family and Del Rossi and his family. During July, Michael Falcone, the other defendant, visited the Lanzettas. He was a brother to the wife of William Lanzetta.

On July 24, 1936, Ignatius Lanzetta was arrested while he was reading in his home. Louis Del Rossi was arrested on the street while he was walking with his wife. Michael Falcone was arrested while he was seated in a parked automobile. These arrests were without warrant. When the defendants were taken into custody by the police, they were not charged with crime but on the following day

warrants were issued charging them with violation of the Gangster Law of 1934. It was not charged or proved that these men ever committed any criminal offense in the State of New Jersey nor were they charged or shown to have been guilty of any disorderly conduct and so far as the evidence is concerned each of the defendants were shown to have been a well behaved person at all times within the State of New Jersey.

The State obtained a conviction on evidence showing (1) that the defendants were convicted of crime in Pennsylvania prior to the passage of the Gangster Law of 1934, (2) that they were "known" to the Philadelphia police to be members of the Lanzetta gang which operated in Philadelphia, Pennsylvania, and (3) that they were not engaged in lawful occupation at the time of their arrest.

The constitutional objections to the validity of such statute were raised in the Cape May County Quarter Sessions Court in the first instance by a motion to quash indictment (State of Case, pages 16, 18, 19). The Court of Quarter Sessions, after argument, denied said motion to quash and exception was granted thereto (State of Case, page 24).

Upon Appeal to the New Jersey Supreme Court, an Appellate Court of first resort, said constitutional objections were raised in the assignments of error and argued on Appeal (*Vide* State of Case, pages 1 and 2).

The Opinion of the Supreme Court in a decision by Parker, J., which considers and refers to such constitutional objections raised by petitioners appears in the State of Case at pages 246, 247 and 248 and the pertinent portion thereof is as follows:

"The second main point is that Chapter 155 of P. L. 1934 is unconstitutional. For this four grounds are specified. Two are substantially the same, viz. due process of law, guaranteed by the fifth and fourteenth

amendments of the Federal Constitution. As to these, we are content to rest on the very recent decision of this Court in *State v. Bell*, 15 Misc. 109, 188 Atl. 757. 'Double jeopardy' is claimed; but no prior conviction or indictment was even suggested. It will be time enough to take up this point when there is a second indictment for the same offense. Further it is specified in the brief that 'the vagueness and indefiniteness of the act would create concurrent jurisdiction in every county in the State.' No doubt such concurrent jurisdiction would exist in every county where the act is violated; as indeed it should exist. Finally, that the act is *ex post facto* in this case because the Pennsylvania convictions of crime that were proved as an element of the present statutory offence took place some years ago. But the statute is not aimed at punishing convicted criminals because they are convicted criminals, but because, being such, they become members of a gang organized to plot and commit further crimes, and neglect or refuse to engage in any lawful occupation. The act is therefore predicated on two present and voluntary acts of the party, both of which must concur: voluntary membership in a gang; and voluntary abstention from work. We see no *ex post facto* legislation here.

"Finding no legal error properly laid before us under this writ, the judgment of conviction is affirmed."

These constitutional objections were again raised in the New Jersey Court of Errors and Appeals (*Vide State of Case*, pages 241 and 242). Said Court of Errors and Appeals, in a *per curiam* opinion filed April 29, 1938, stated,

"We are in full accord with the reasoning and result reached by the Supreme Court. We desire merely to mark the fact that the case of *State v. Bell*, 15 N. J. Mis. R. 109, 188 Atl. 737, relied upon by the court below as dispositive of the contentions that our Gangster Act (1 Rev. Stat. (1937) 2:136-4 (Ch. 155, P. L. 1934, p. 794), trenches upon both Federal and State constitu-

tional inhibitions, has recently been affirmed by this court sub nomine *State v. Gaynor*, 119 N. J. L. 582, 197 Atl. 360.

Accordingly, the judgment under review is affirmed with costs."

The opinion of the Supreme Court is officially reported in 118 N. J. L. 212, 192 Atl. 89. The opinion of the Court of Errors and Appeals is reported in 120 N. J. L. 189.

The question involved in this appeal is of a substantial nature and if the contentions of appellants are upheld they will be relieved of completing a sentence of not less than five years or more than ten years at hard labor in the State Penitentiary. The question involved is whether said Statute of New Jersey, under which defendants were convicted and sentenced, violates Section 10 of Article 1 of the Constitution of the United States which prohibits States from passing *ex post facto* laws and also whether it violates the due process of law and the privileges and immunities guaranteed to the citizens of the United States by the Fifth and Fourteenth Amendments to the Federal Constitution.

It is respectfully submitted that this application for appeal is timely in that it is taken within three months after the entry of the final judgment of the New Jersey Court of Errors and Appeals, as provided by Section 8 (a) of the Act of Congress of February 13, 1925 (U. S. Code, Title 28, Section 350, 43 Stat. L. 936), which provides, *inter alia*:

"That no writ of error, appeal or writ of certiorari, intended to bring any judgment or decree before the Supreme Court for review shall be allowed or entertained unless application therefor be duly made within three months after the entry of such judgment or decree. * * *"

In this case, the final judgment sought to be reviewed was entered on April 29, 1938, and the application for appeal

was filed on July 13, 1938; said application was denied by Chancellor Luther A. Campbell, as more fully appears in the application for appeal which was presented to this Honorable Court.

The New Jersey Court of Errors and Appeals is the highest Appellate Court in said State and the decision of the Court is final in all respects.

The jurisdiction of the United States Supreme Court to review this case is expressly conferred by Section 237 (a) of the Judicial Code hereinabove recited.

We respectfully submit, therefore, that in a criminal proceeding where the personal liberty of citizens is involved questions of paramount and most substantial importance are presented. *Weems v. United States*, 217 U. S. 349, 362, 30 S. Ct. 544, 54 L. Ed. 793.

We therefore most respectfully submit that the Gangster Act of New Jersey is repugnant to the Constitution of the United States in that (1) it violates Section 10 of Article 1 which prohibits the States from passing *ex post facto* laws, (2) it violates the Fourteenth Amendment to the Federal Constitution in that it denies due process of law and (3) it violates the privileges and immunities as citizens of the United States, which privileges and immunities are guaranteed by Section 1 of the Fourteenth Amendment to the Constitution of the United States; and it is further urged that the Supreme Court of United States under Section 237 (a) of the Judicial Code has jurisdiction to review and decide this case upon Appeal.

Respectfully submitted,

SAMUEL KAGLE.

GEORGE C. KLAUDER.

HARRY C. MACKEY.

APPENDIX.**COURT OF ERRORS AND APPEALS.**

FEBRUARY TERM, 1938.

No. 15.

STATE OF NEW JERSEY, *Defendant-in-Error*,
*v.*FRANK PIUS, Alias IGNATIUS LANZETTA, MICHAEL FALCONE
and LOUIE DEL ROSSI, *Plaintiffs-in-Error*.

Submitted — — —. Decided April 29, 1938.

On error to the Supreme Court, whose opinion is reported
in 118 N. J. L. 212, 192 Atl. 89.For plaintiffs-in-error; James Mercer Davis, Samuel
Kagle and Carl Kisselman.For defendant-in-error; French B. Loveland, prosecutor
of the pleas, Herbert F. Campbell, assistant prosecutor of
the pleas.**PER CURIAM:**

We are in full accord with the reasoning and result reached by the Supreme Court. We desire merely to mark the fact that the case of *State v. Bell*, 15 N. J. Mis. R. 109, 188 Atl. 737, relied upon by the court below as dispositive of the contentions that our Gangster act (1 Rev. Stat. (1937) 2:136-4 (Ch. 155, P. L. 1934, p. 794) trenches upon both federal and state constitutional inhibitions, has recently been affirmed by this court sub nomine *State v. Gaynor*, 119 N. J. L. 582, 197 Atl. 360.

Accordingly, the judgment under review is affirmed with costs.

Endorsed: "Filed Apr. 29, 1938. Thomas A. Mathis, Clerk."

